

February 28, 2008

Mr. Bruce Wolfe, Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street, Suite 500  
Oakland, CA 94612

Subject: Comments on Municipal Regional Stormwater NPDES Permit Tentative Order

Dear Mr. Wolfe:

The City of Livermore is filing these comments with regard to the Tentative Order for the Municipal Regional Stormwater NPDES Permit for Dischargers from Municipal Phase I Permittees in the San Francisco Bay Region issued on December 4, 2007 as amended. Livermore staff requests that you include these comments in the record of this administrative proceeding.

The City of Livermore is a member agency of the Alameda Countywide Clean Water Program. The Alameda Countywide Cleanwater Program, since its formation, has been a leader in protecting water quality. The Program has received national recognition and awards by the United States Environmental Protection Agency and the policies, procedures, and programs developed in Alameda County have been used as models for stormwater programs throughout the State of California. Over the past 15 years, the City of Livermore has been a leader in the Alameda Countywide Clean Water Program and has made consistent efforts to implement an effective stormwater program.

Beginning in the fall of 2005, the Regional Board commenced the development of a municipal regional stormwater permit. As you are aware, the primary goal of this undertaking was to develop a permit that resulted in a consistent, coordinated, and effective "region-wide" approach towards the implementation of urban runoff pollution controls throughout the San Francisco Bay Area. Throughout this process, several municipalities and clean water programs have provided detailed comments and input to the RWQCB during both the "working draft" and "administrative draft" stages. The Tentative Order, however, fails to adequately address and or incorporate any of these municipalities' prior comments. Therefore, City of Livermore staff has included a copy of its November 8, 2006 letter detailing comments on the "Draft MRP" along with this submittal. As these comments are still pertinent to the current Tentative Order, Livermore staff request that Board staff include the comments contained in this

November 8, 2006 correspondence in the record of this administrative proceeding and provide responses accordingly.

The Tentative Order, as written, is overly prescriptive in many areas, lacks adequate prioritization, and mandates the development of a significant number of written plans, ordinances, databases, and reports that appear to offer little or no benefit to improving water quality. If adopted in its current form, the Municipal Regional Stormwater NPDES Permit will result in successful Cleanwater Programs, such as the ACCWP, becoming less effective in improving water quality due to the addition of these burdensome administrative requirements and their associated costs.

Specifically, the City of Livermore staff believes the following provisions of the Municipal Regional Stormwater NPDES Permit Tentative Order are seriously flawed and must be eliminated or fundamentally revised prior to adoption:

1. Lowering the threshold to 5,000 sq ft for new development and redevelopment projects required to meet the C.3. Provisions for treatment.

This requirement is unnecessary for the City of Livermore, where a study by Regional Board staff found that the existing 10,000 square foot threshold captured 97% of all the impervious surfaces installed in the City. Also, implementation of effective treatment controls becomes significantly more difficult on small sites. If this requirement is included in the permit, Permittees (including Livermore) will likely choose to implement token, manufactured controls on small projects simply to meet the permit requirement, without regard to the effectiveness of the controls.

2. Increase in data collection and reporting requirements throughout all program components by requiring numerous new databases and the use of a 124 page annual report format.

This is one of the most onerous and least-efficient areas of the permit, and the one that most penalizes high-performing programs like Livermore. The more time staff spends completing databases, revising or creating unnecessary ordinance provisions, or filling out report forms is time that will not be spent on field activities. Board staff's approach to address historically low-performing agencies seems to be to punish the entire stormwater community with extremely prescriptive reporting requirements to justify almost every activity. This effort to ensure compliance through volumes of data will drag down efficient programs which have lead the way in developing new stormwater management practices over the last 15 years.

3. Arterial streets or roads that are rehabilitated down to the gravel base and replace 10,000 square feet or more of contiguous impervious surface are required to meet the C.3 stormwater treatment requirements.

For most arterial roads the “footprint” of the road is well-established and there is inadequate room for effective treatment controls. This requirement should be removed entirely.

4. The permit is overly restrictive in dictating the enforcement response that municipalities must take in response to violations.

Agencies should be able to choose the appropriate enforcement response for their jurisdiction instead of being required to issue citations for given violations. The important factor should be the time in which the violation is corrected. Whether an agency chooses to gain compliance through education or punitive enforcement is no concern of Board staff. This requirement should be revised to specify a time-frame for compliance and leave the method up to individual agencies.

5. Conduct a feasibility study on diverting dry-weather or “first flush” flows from stormwater pump stations to the sanitary sewer, and conduct 5 pilot studies (per Countywide stormwater program) to divert flows to sanitary sewers.

Diverting dry weather flows or first flush flows to sanitary sewer is infeasible for most wastewater treatment plants due to capacity restrictions. This requirement should be removed.

6. Increase in trash/litter control efforts, including requiring that “enhanced measures” be implemented in 10% of urban area regardless of trash impacts/loading rates, and requiring the installation of “full capture treatment devices” in at least 5% of urban areas, even if “enhanced measures” have been implemented and proven effective.

It is redundant to have Permittees implementing full capture devices *and* enhanced measures in the same areas. The area selected for full capture devices should be eliminated from the requirements to implement enhanced controls.

7. Permittees must collect grab samples from pump stations during early summer and fall. Pump stations must be ranked, from best to worse, based on the analytical results. Regardless of the actual analytical results, those that are the “worse” must conduct additional monitoring.

This requirement is arbitrary by using a simple ranking of the results with no evaluative criteria to determine the need for additional sampling. As written, if all of the sample results met drinking water standards, the “lowest” ranked sites would still need to perform additional sampling. Some criteria should be added to evaluate the data, or preferably, this requirement should be eliminated.

8. Trash management plans must have the goal of no impact of trash on beneficial uses by 2023.

This requirement is unrealistically ambitious and fails to recognize the last 40 years of anti-littering efforts that have been unable to eliminate this societal problem. This requirement should be removed.

9. Permittees must develop a plan for sampling PCBs at demolition sites and develop BMPs to reduce or prevent discharges of PCBs at such sites.

Permittees lack the authority to require clean up of legacy pesticides on private property where the levels of pollutants do not exceed some pertinent water quality standard. This requirement should be eliminated.

10. Permittees must develop a pilot project to investigate and abate on-land drainages, including private property, public rights-of-ways, and stormwater conveyances with accumulated sediments that have elevated PCB concentrations.
11. Exempt Discharges: *Pumped groundwater, foundation drains, water from crawl space pumps, footing drains, air conditioner condensate, planned/unplanned and emergency discharges from potable water systems, individual residential car washing, swimming pools, hot tubs, spas, fountain waters, and irrigation waters.* For each of these discharges the permit requires prescriptive BMPs and control measures including: (1) treatment before discharge to remove pollutants (2) discharge of condensate to ground or sanitary sewer (3) discouragement of residential car washing through public outreach (4) disposal of discharge from pools to the sanitary sewer and (5) managing a record of all authorized pool discharges of 5,000 gallons or greater.

This provision is unnecessary for these activities that have historically been insignificant sources of pollutants. Requiring agencies to track and report the number of pool discharges authorized will have no discernable effect on water quality, but will require staff time that could better be spent on other activities. Furthermore, this requirement would subject agencies to technical “violations” of the permit for failing to document an insignificant phone conversation. These provisions should be removed in an effort to prioritize permittees activities towards more important matters.

In addition to these and many other specific problems with the Tentative Order requirements and language, the overall permit is exceedingly specific and prescriptive. It eliminates all of the flexibility and creativity in implementing the requirements that was present in permits issued over the past 15 years. The permit fails to acknowledge local conditions within different municipalities or the geographical differences between different parts of the Bay Area.

The permit also fails to recognize the past efforts of municipalities or countywide programs in implementing what are, in effect, model programs. Past stormwater permits allowed sufficient flexibility for agencies to emphasize areas of local

importance by developing programs that exceeded requirements in some areas while minimizing the focus on other areas that are not a particular problem in that municipality.

The Tentative Order seems to include every requirement as a top priority, which is unreasonable and fails to recognize existing and future constraints on staff time and funding. When everything is a priority, nothing can be a priority. Due to these fatal flaws of being overly prescriptive and of failing to prioritize the required activities, the City of Livermore concludes that this Tentative Order will significantly reduce the level of innovation and creativity in solving stormwater problems. With a detailed permit that explicitly spells out almost every facet of the program, agencies will simply not have the time or resources to excel in any one specific area of the program, and the development of new and better solutions to stormwater problems will effectively cease as agencies struggle to meet arbitrary reporting and data collection requirements that have no direct benefit to water quality.

The City of Livermore feels that the Tentative Order must be significantly revised, properly prioritized and “phased in” in order for municipalities to achieve measurable water quality benefits. If not, the MRP will only succeed in reducing the effectiveness and performance of the leading countywide and municipal stormwater programs while simultaneously failing at the goal of improving the compliance of historically low performing programs.

Sincerely,

Darren Greenwood  
Water Resources Division Manager

Cc: Dan McIntyre, Director of Public Works